

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 929 OF 2019**

**DISTRICT : NANDURBAR**

**Shaikh Mohd. Rafi s/o Shaikh,** )  
**Mohammad Shafi (R.S. Shaikh)** )  
 Age : 58 years, Occu. : Pensioner )  
 (retired Dairy Supervisor), )  
 R/o. Lahaan Maliwadi, Dhanora Road, )  
 Nandurbar, District - Nandurbar. )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
 Through : The Secretary, )  
 Agriculture, Animal Husbandry, Dairy )  
 Development and Fisheries Department,) )  
 Mantralaya, Mumbai-32. )
2. **The Regional Dairy Development Officer,)**  
 Jalna Road, Hotel Amarpreet Chowk, )  
 Aurangabad Region, Aurangabad. )
3. **The Regional Dairy Development Officer,)**  
 Nashik Region, Nashik, Trymbak Road,) )  
 Nashik-422002. )
4. **The Dairy Manager,** )  
 Government Milk Scheme, Chakkarbardi )  
 Road, Dussera Maidan, Dhule, Dhule-424001.)
5. **The Deputy Dairy Manager,** )  
 Government Milk Scheme, Udgir, )  
 Tq. Udgir, Dist. Latur-413517. )

... **RESPONDENTS**

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**APPEARANCE** : Shri S.D. Joshi, Counsel for Applicant.

: Shri B.S. Deokar, Presenting Officer for  
 respondent authorities.

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**CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATE : 21.02.2024**  
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**ORAL - ORDER**

1. Heard Shri S.D. Joshi, learned counsel appearing for the applicant and Shri B.S. Deokar, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application heard finally with the consent of both the parties at the admission stage.

3. By filing the present Original Application, the applicant is assailing the recovery of Rs. 26,156/- from the Provident Fund payable to him. Recovery was made on the ground that the applicant has caused monetary loss to the Government during three different spells of his working from 15.06.1991 to 31.03.2015.

4. Learned counsel for the applicant submits that during pendency of the present Original Application, the department has refunded the amount of Rs. 9,481/- to the applicant. So challenge to the recovery is remained only to the extent of amount of Rs. 16,675/-. Learned counsel on instructions

submits that the applicant does not wish to press the prayer clause 8 (D) & (E).

5. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant retired in the capacity of Dairy Supervisor on 28.02.2019. He was joined the respondent department on 06.10.1980 as Assistant Dairy Chemist and in that capacity, he had worked on various district places. The applicant while working at Government Milk Scheme Dhule during the periods from 15.06.1991 to 08.07.1991, 02.06.2002 to 31.03.2009 and 01.06.2012 to 31.05.2015, it has been revealed during the audit that the applicant has caused loss to the department to the tune of Rs. 26,156/- due to the dereliction of duties. The said amount has been recovered from the Provident Fund of the applicant after his retirement. However, during pendency of the present Original Application, certain amount came to be refunded to the applicant and challenge is only to the extent of Rs. 16,675/-. Hence, the present Original Application.

6. Learned counsel for the applicant submits that though the applicant was served with the notice as contemplated

under Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short 'the Rules of 1979') for imposing minor penalties on account of said loss caused to the department due to dereliction of duties, however it is the specific reply filed on behalf of respondent Nos. 3 & 4 that due to heavy work load, the office of respondents could not conduct the enquiry against the applicant and further the amount of financial loss is very less. Thus the enquiry was not taken to its logical end.

7. Learned counsel for the applicant submits that in terms of Rule 10 of the Rules of 1979, the procedure for imposing minor penalties is prescribed and after following due procedure as prescribed in the said rule, the order with reasons is required to be passed. In the instant matter, no order has been passed. The applicant never agreed to deposit the said amount. Consequently, the said amount came to be recovered from the retirement benefits of the applicant. Learned counsel submits that the present Original Application deserves to be allowed.

8. Learned Presenting Officer submits that even though the enquiry was not conducted due to heavy work load, however, the applicant has orally assured the department to deposit the said amount and in view of the same, even if the enquiry is not

concluded, the applicant is not entitled to claim the refund of recovered amount.

9. Learned Presenting Officer submits that there is communication received from respondent No. 3 on 20.02.2024 wherein it is specifically submitted that the charge sheet came to be submitted under Rule 10 of the Rules of 1979 on the applicant for recovery of amount of Rs. 26,156/- along with two other employees and said two employees have deposited the amount to be recovered. So far as the present applicant is concerned, though show cause notice is given for total amount of Rs. 26,156/- , however, it is noticed that he is liable to pay Rs. 16,675/- and therefore remaining amount of Rs. 9,481/- which is recovered from his Provident Fund has been returned to the applicant. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

10. Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 prescribes procedure for imposing minor penalties. Rule 10 of the said Rules 1979 reads as under :-

***“10. Procedure for imposing minor Penalties.- (1) Save as provided in sub-rule (3) of rule 9, no order imposing on a Government servant any of the minor penalties shall be made except after,-***

- (a) *informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;*
- (b) *holding an inquiry in the manner laid down in rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;*
- (c) *taking into consideration the representation, if any, submitted by the Government servant under clause (a) of this rule and the record of inquiry, if any, held under clause (b) of this rule;*
- (d) *recording a finding on each imputation of misconduct or misbehaviour; and*
- (e) *consulting the Commission where such consultation is necessary.*

(2) *Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government's servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period + [or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the rule (5)], an inquiry shall be held in the manner laid down in sub-rule (3) to (27) of rule 8, before making any order of imposing on the Government servant any such penalty.*

- (3) *The record of the proceeding in such cases shall include-*
- (i) *a copy of the intimation to the Government servant of the proposal to take action against to him;*
  - (ii) *a copy of the statement or imputations of misconduct or misbehaviour delivered to him;*
  - (iii) *his representations, if any;*
  - (iv) *the evidence produced during the inquiry;*
  - (v) *the advice of the Commission, if any;*
  - (vi) *the findings un each imputation of misconduct or misbehaviour; and*
  - (vii) *the orders on the case together with the reasons therefor."*

11. In terms of Rule 10(1)(a) of the Rules of 1979, it is incumbent upon the department to inform the Government servant in writing of the proposal to take action against him and by giving him a reasonable opportunity of making such representation as he may wish to make against the proposal. In terms of sub-rule (3)(vii) of Rule 10 of the Rules of 1979, the record and proceedings in such enquiry consisting of orders on the case together with the reasons therefor.

12. In the instant matter, even though the applicant came to be informed about his dereliction of duties, which is resulted into causing loss to the department, however, in terms of the affidavit in reply filed on behalf of respondent Nos. 3 and 4, it is clear that the said enquiry was not further carried out due to heavy work load. It is thus not clear as to whether the applicant has given reasonable opportunity of making such representation as he may wish making against the show cause notice (charge sheet as contended by the department). Admittedly, no order has been passed against the applicant in this regard in terms of the Rule 10 of the Rules of 1979 for recovery of amount.

13. In view of above discussions, the amount recovered from the applicant from his retiral benefits more particularly

from his Provident Fund is improper, incorrect and illegal. Thought the amount of Rs. 9,481/- has been refunded to the applicant, however, the amount of Rs. 16,675/- has been illegally recovered from the Provident Fund of the applicant. The said recovery is liable to be quashed and set aside. Hence, the following order :-

**ORDER**

- (i) The Original Application is hereby allowed.
- (ii) The impugned communication dated 16.07.2019 issued by respondent No. 5 thereby recovering an amount of Rs. 16,675/- (at present) out of the Provident Fund payable to the applicant is hereby quashed and set aside.
- (iii) The respondents are hereby directed to refund the amount of Rs. 16,675/- to the applicant as expeditiously as possible and preferably within a period of three months from the date of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**

**DATE : 21.02.2024**

**(Justice V.K. Jadhav)**

**Member (J)**